78-1358

Supreme Court, U. S.
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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

State of Florida, ex rel., Gilbert Frazier,

Petitioner,

against

The Honorable Stanton Kaplan, etc., et al.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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January 29, 1979.

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Opinions Below

The opinion of the Florida Supreme Court is printed in Appendix 1 hereto, infra, page 1a. The judgment of The District Court of Appeal, Fourth District of Florida is printed in Appendix 2 hereto, infra, page 2a. The Decision of the Circuit Court for the 17th Judicial Circuit, in and for Broward County, Florida, is printed in Appendix 3 hereto, infra, page 4a. The Decision of the Municipal Court in and for Broward County, Florida, by Judge John F. Spellacy was oral in open court in proceeding conducted pursuant to a hearing on a Motion to Dismiss, on December 29, 1976.

Jurisdiction

The judgment of The Florida Supreme Court (Appendix 1, infra, page 1a) was entered on October 31, 1978. The Order stated that a Petition for Re-Hearing would not be entertained by the Court. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. §1254(1) and 28 U.S.C. §1257(3). No further review is available in State Court.

Questions Presented

1. Whether The Florida Supreme Court erred in denying Writ of Certiorari to a case where an individual was charged with violation of a municipal ordinance which was a borrowing ordinance which incorporated all of the Florida Statutes entitled "crimes", and after the "speedy trial" had elapsed, not the fault of the Defendant/Petitioner, the Defendant/Appellant's Writ of Prohibition (Motion to Dismiss) was denied by the Court. Whether said denial serves to violate the appellant's right to a speedy trial guaranteed by the Sixth Amendment to the United States Constitution.

2. Whether The Florida Supreme Court's denial of a Writ of Certiorari served to assist the violation of the Defendant/Appellant's right to equal protection of the laws under the Fourteenth Amendment, Section 1 of the United States Constitution, in that, the speedy trial rule was held inapplicable to Municipal Court proceedings but an individual charged with the same crime and brought before the County Court would have received the protections conferred under the speedy trial rule and Rule 3.191 of the Florida Rules of Criminal Procedure.

Statutes Involved

1. Amendment VI; United States Constitution: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

2. Article I, Section 16, Declaration of Rights, Constitution of the State of Florida: "In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation against him, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed. If the county is not known, the indictment or information may charge venue in two or more counties conjunctively and proof that the crime was committed in that area shall be sufficient; but before pleading the accused may elect in which of those counties he will be tried. Venue for prosecution of crimes committed beyond the boundaries of the state shall be fixed by law.

3. Rule 3.191. Speedy trial, Florida Rules of Criminal Procedure: "(a)(1). Speedy trial without demand. Accept as otherwise provided by this rule, every person charged with a crime by indictment or information shall without demand be brought to trial within 90 days if the crime charged be a misdemeanor, or within 180 days if

the crime charged be a felony, capital or non-capital, and if not brought to trial within such time shall upon motion timely filed with the court having jurisdiction and served upon the prosecuting attorney be forever discharged from the crime; provided, the court before granting such motion shall ascertain that such person has been continuously available for trial during such period of time for trial. The time periods established by the section shall commence when such person is taken into custody as a result of the conduct or criminal episode giving rise to the crime charged. A person charged with a crime is entitled to the benefits of this rule whether or not such person has been held to answer at a preliminary hearing, or whether or not such person has waived such hearing, and whether such person is in custody awaiting trial or is at liberty on bail or recognizance. If such person is serving a sentence of imprisonment elsewhere than Florida for conviction of an unrelated crime, the operations sections shall not be effective until such person is no longer confined. This section shall cease to apply whenever a person files a demand for speedy trial under Section (a)(2)."

4. Amendment XIV, Section 1, United States Constitution: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

5. Title XLIV, Florida Statutes, Crimes, Chapter 784, 784.03:

"(1) A person commits battery if he:

(a) actually and intentionally touches or strikes another person against the will of the other; or

(b) intentionally causes bodily harm to individual.

(2) Whoever commits battery shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 774.082, s. 775.083, or s. 774.084."

6. City of Hollywood, Municipal Code, Chapter 21, Section 21-1, Adoption of State Misdemeanors; Penalty. "Every offense which is defined by the Florida Statutes as a crime thereunder and is punishable as a misdemeanor, be and the same are hereby adopted as penal ordinances by the City of Hollywood; and any person, firm or corporation violating said penal laws, which are punishable as misdemeanors within the City of Hollywood, Florida, shall upon conviction thereof, be fined an amount not to exceed Five Hundred Dollars ($500) or ninety (90) days in jail or both such fine and imprisonment."

Statement of Case

The decision sought to be reviewed was made by the Florida Supreme Court in proceedings which originated in the Municipal Court for the City of Hollywood, wherein the Defendant, Petitioner herein, was alleged to have violated, and the information charged violation of Hollywood Municipal Code "21-1, Florida Statute 784.03 by battery, 6/12/76." The docket sheet in the Municipal Court for the City of Hollywood indicated the date of arrest as June 23, 1976;

thereafter, the Court set a trial date for September 7, 1976. The presiding judge, however, disqualified himself from hearing the case and the trial was reset by the Court for December 29, 1976. On or about December 10, 1976, a Motion to Dismiss was filed in the Municipal Court for the City of Hollywood. The Motion alleged that Florida Rules of Criminal Procedures 3.191 had been violated in that, more than ninety (90) days had elapsed since the date of the arrest. At the hearing on December 29, 1976, the Court held that the speedy trial rule was inapplicable to municipalities. The instant case, however, was filed as a misdemeanor, as indicated by the charging document which listed a violation of Section 784.03 of the Florida Statutes. Further, the Petitioner was at all times ready and able to proceed to trial and did nothing to delay the trial, filed all motions in a timely manner and never precipitated nor caused a delay of the trial.

In consequence of the ruling denying the Petitioner's Motion to Dismiss, the Petitioner moved to transfer the cause to the County Court in and for Broward County. At that point, March 3, 1977 was indicated as the trial date, some 253 days subsequent to the Petitioner's date of arrest. A Motion to Dismiss and/or Discharge the cause based on a violation of Rule 3.191 was filed as a result of the violation of the Rule in the Municipal Court proceedings.

The judge of the County Court denied the Motion to Dismiss and/or Discharge and the Petitioner filed a Writ of Prohibition in the Circuit Court in and for the 17th Judicial Circuit. The Writ alleged a violation of Rule 3.191 and as a result of said violation prayed that the charges against the Petitioner be dismissed. The Petitioner

alleged in the Writ of Prohibition that in furtherance of the violation of Rule 3.191 he had also been denied the constitutional right to a speedy trial pursuant to Article I, Section 16 of the Florida Constitution and the Sixth Amendment to the Constitution of the United States. The Circuit Court denied the Petitioner's Writ of Prohibition (Appendix 3, infra, page 4a), and the Petitioner filed his Notice of Appeal in the Fourth District Court of Appeal to review the Circuit Court's decision.

The question presented squarely to the Fourth District Court of Appeal was whether a Defendant charged in Municipal Court with the violation of a crime pursuant to a state statute is entitled to the protection of Rule 3.191 and whether the denial of the application of this Rule is a violation of his constitutional right to a speedy trial guaranteed by the Sixth Amendment to the United States Constitution and Article I, Section 16 of the Florida Constitution. On May 23, 1978, the District Court of Appeal, Fourth District, issued a Per Curiam affirmance decision (without opinion). (Appendix 2, infra, page 2a).

The Petitioner then sought review on a Writ of Certiorari before the Florida Supreme Court, alleging jurisdiction by virtue of a conflict between a decision of the Fourth District Court of Appeal and the Florida Supreme Court. On October 31, 1978, the Florida Supreme Court denied the Petitioner's Writ of Certiorari and the Order stated that no Petition for Re-hearing would be entertained by the Court. (Appendix 1, infra, page 1a).

The Petitioner now seeks a Writ of Certiorari to review the decision of the Florida Supreme Court as one which has determined a Federal question of substance which has not heretofore

been determined by this Court and has decided that question in a manner which is repugnant to Federal Constitutional provisions and prior decisions of this Court.

Reasons for Granting Writ

This case concerns the rights of an individual accused of violating a Municipal Ordinance which incorporates every offense which is defined by the Florida Statutes as a "crime". The question then presented to the lower courts herein was whether the protections conferred under the Sixth Amendment to the United States Constitution; Article 1, Section 16 of the Florida Constitution and Rule 3.191 of the Florida Rules of Criminal Procedure are applicable in the instant Municipal Court proceeding.

The trial court herein placed great reliance on the decision in State v. Kaplan (DCA 4, Fla., 1974) 297 So 2d 869, claiming that that case stood for the proposition that "the speedy trial rule," was inapplicable in municipal court proceedings. The Petitioner herein, contests whether the courts of the State of Florida could make a Constitutional right, applicable to the States in Klopfer v. North Carolina, 386 U. S. 213, 87 S. Ct. 988, 18 L. ed 2d 1 (1967), inapplicable to state court proceedings where a "crime" is charged. Furthermore, inspite of the foregoing, the Petitioner distinguished State v. Kaplan, supra, by indicating two very pertinent factors which were present in Kaplan but were not in the instant case, to-wit: In Kaplan, (1) "No formal attempt was made in municipal court to raise the questions of entitlement to a speedy trial." (2) "Prior to trial time in Municipal Court, appellant demanded trial by jury which caused the charges to be transferred to the County Court for trial." These

two facts were crucial to the holding of that case. By requesting a trial by jury the appellant in the Kaplan case waived his right to a speedy trial in Municipal Court, and restarted the time limitations indicated in Rule 3.191 in the County Court. This interpretation is clearly substantiated by a later case also arising out of the Fourth District Court of Appeal, State v. Hendricks, (DCA 4, Fla., 1975) 309 So 2d 232, which stated,

> "Clearly Defendant had no constitutional right to a jury trial. His was only a statutory right to transfer to another court, if, as was the case here, the City did not offer jury trial. The Defendant's choice to activate the transfer procedure constituted a waiver of the speedy trial rule and constituted a trial tactic which should not be available to subvert the ends of justice. Instead, the speedy trial rights should have simply recommended upon his case having been docketed in the County Court; the June 5, 1974, jury trial date was therefore, timely." Hendricks, supra, at 233.

Furthermore, the above cited case appears to indicate that the speedy trial right was applicable to the appellant therein as the time limitations "recommended" upon the case being docketed in the County Court.

Of particular note in the instant case, is the fact that the charging document specifically alleged violation, not only of the Municipal Code, but also of a crime defined under the Florida Statutes, to-wit, Florida Statute 784.03. The Florida criminal rule which procedurally applies the spirit and substance of the Federal and Florida Constitutional protections, by its

express wording, applies to any proceeding in which a "crime" is charged. Of further note is the fact that the municipal ordinance under which the instant Petitioner was charged, which borrows from defined "crimes" under the Florida Statutes, enpowers that municipal court to impose up to ninety (90) days of incarceration for violations thereof. The rationale for the application of the constitutional guarantee of a speedy trial, is no less present here, as it would be in any other proceeding.

> "The Petitioner remains a criminal accused, restricted by the limitations of his bail, faced with the oppressive burden of defending a trial that may come, if at all, at some far off date, his right to a speedy trial denied without any realistic relief. This is not the intent of the statute as we interpret it. The State cannot arrest an accused in haste and then prosecute the case at its leisure. An individual cannot be placed in a demoralizing position of being an untried accused for an interminable period of time." Gossett v. Hanlon, (Fla. App., 1967) 195 So 2d 865; see also Klopfer v. North Carolina, supra.

The instant Petitioner was blemished during the period he was charged with the violation without benefit of resolution through trial, by publicly being exposed to the demoralizing stigma which attaches to arrests for which a substantial period of incarceration is available.

The City attempted to justify the delay by claiming that the instant case fell within the "exceptional circumstances" which justify deviation from the speedy trial rule. (Rule 3.191(f) and (l) of the Florida Rules of Criminal Procedure) However, the City ignored the specific wording of Rule 3.191(f)E, Exceptional Circumstances, RCrP which states:

> "As permitted by this rule, the court may order an extension of time or continuance where exceptional circumstances are shown to exist; exceptional circumstances shall not include general congestion of the court's docket, lack of diligent preparation, for failure to obtain available witnesses, or other avoidable or foreseeable delays." (emphasis added)

It is clear from the wording of this section of the rule that the claim of "exceptional circumstances" requires an Order of the Court to justify any extension of the time period. In the instant case the City did not request an extension of time under the above cited provision, and no Court Order was issued to that effect.

The reliance placed on State v. Kaplan (DCA 4, Fla., 1974) 297 So 2d 869, to the effect that the speedy trial rule is inapplicable to Municipal Court proceedings, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment to the United States Constitution makes the Speedy Trial right of the Sixth Amendment to the United States Constitution applicable to the states. The differentiation between individuals charged with the instant "crime" in the Municipal Courts and similarly situated individuals charged in the County Court, creates an unreasonable classification which is not supported by any justifying state reason. The denial of the Petitioner's right to a speedy trial represents the denial of a "basic right" and denies the Petitioner herein the equal protection of the law.

Conclusion

Wherefore, Petitioner prays that a Writ of Certiorari issue for this Honorable Court to review the judgment of the Supreme Court of Florida in State of Florida, ex rel., Gilbert Frazier, Petitioner, vs. The Honorable Stanton Kaplan, etc., et al., Respondent. In the event that the Petition is granted, Petitioner prays the judgment of the Court below be reversed, that the cause be remanded, and that the Court below be directed to issue the Writ of Prohibition and dismiss the charges against the Petitioner.

Respectfully submitted,

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Panza, O'Donnell & Jacobson

Dated: January 29, 1979

State Court Judgments and Opinions

Appended hereto are the following judgements, orders and opinions rendered in the Florida State courts below:

Appendix 1 - Opinion of Supreme Court of Florida, of October 31, 1978.

Appendix 2 - Opinion of Fourth District Court of May 23, 1978.

Appendix 3 - Opinion of Circuit Court of the 17th Judicial Circuit, of March 23, 1977.

Appendix 1
Opinion of Supreme Court of Florida,
of October 31, 1978

SUPREME COURT OF FLORIDA

Tuesday, October 31, 1978

GILBERT FRAZIER,	)	CASE NO. 54,835
Petitioner,	)	District Court of Appeal, Fourth District, 77-604; 77-772
vs.	)	
STANTON KAPLAN, etc., et al.,	)	
	)	
Respondents.	)	

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Fla. R. App. P. 9.120, and it appearing to the Court that it is without jurisdiction, it is ordered that certiorari is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

ENGLAND, C.J., ADKINS, BOYD, OVERTON and ALDERMAN, JJ., concur.

Sid J. White
Clerk Supreme Court

By: Debbie Causseaux
Deputy Clerk

Appendix 2
Opinion of Fourth District Court,
of May 23, 1978.

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA,
FOURTH DISTRICT
JANUARY TERM 1978

STATE OF FLORIDA, ex rel., Appellant/Petitioner, v. THE HONORABLE STANTON KAPLAN, Chief Judge of the County Court, in and for Broward County, Florida, and THE HONORABLE PATRICIA COCALIS, Judge of the County Court of Broward County, Florida, Appellee/Respondent.	CASE NOS. 77-604 and 77-772

Decision filed May 23, 1978.

Consolidated Appeal and Petition for Writ of Certiorari from the Circuit Court for Broward County; Russell E. Seay, Jr., Judge.

Melanie C. Jacobson, Fort Lauderdale, for appellant.

Appendix 2, Opinion of Fourth District Court, of May 23, 1978.

Michael J. Satz, State Attorney, 17th Judicial Circuit of Florida, William W. Herring and Patti Englander, Assistant State Attorneys, and James E. Zloch, Legal Intern, Fort Lauderdale, for appellees.

PER CURIAM.

AFFIRMED.

ANSTEAD and MOORE, JJ., and SIMONS, STUART M., Associate Judge, concur.

Appendix 3
Opinion of Circuit Court of the 17th Judicial Circuit, of March 23, 1977

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA.

THE STATE OF FLORIDA, ex rel., GILBERT FRAZIER, Relator, vs. THE HONORABLE STANTON KAPLAN, Chief Judge of the County Court, in and for Broward County, Florida, and THE HONORABLE PATRICIA COCALIS, Judge of the County Court of Broward County, Florida, Respondent.	CASE NO. 77-4286

O R D E R

The above having come before the Court on the Relator's Suggestion for Writ of Prohibition, and the Court being of the opinion that Florida Rule of Civil Procedure 3.191, the speedy trial rule, does not apply to municipal ordinance violations, it is hereby

Appendix 3, Opinion of Circuit Court of the 17th Judicial Circuit, of March 23, 1977.

ORDERED AND ADJUDGED that the Relator's Suggestion for Writ of Prohibition be and the same is hereby denied.

DONE AND ORDERED in Chambers at Broward County, Fort Lauderdale, Florida, this 23rd day of March, 1977.

/s/ Russell E. Seay, Jr.
Circuit Court Judge